IN HE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICTION NO. 917 OF 2005.

Mr. Nobel Vaz
and 11 Others. .... Applicants.

Versus

The Member Secretary and
6 Others. .... Respondents.

Shri M. S. Sonak, Advocate for the Applicants.

Shri A.F. Diniz, Advocate for the Respondent No.1.

Ms. W. Coutinho, Government Advocate for the Respondents No.3, 4, 5 and 8.

Shri C.A. Ferreira, Advocate for the Respondent No.6

Shri S.D. Lotlikar, Senior Advocate with Shri F.M. Reis and Shri A.D. D'Souza, Advocates for the Respondent No.7.

CORAM: D.D. SINHA &
N. A. BRITTO, JJ.

DATE: 15th DECEMBER, 2005.

P.C.:

Heard Shri MS. Sonak, learned counsel for the applicants and

Mr. S.D. Lotlikar, learned Senior Counsel for the Respondent No.7.

The applicants have filed M.C.A. No.917/05 whereby direction is sought restraining respondent No.7 from operating the restaurant " La Trattoria" or "La Trattoria Restaurant by the pool side" on the following grounds :-

2. Mr. Sonak, the learned counsel for the applicants has contended that since the construction of the portion of the building where the restaurant is located was inconsistent with the norms laid down by the Planning authority and therefore the applicants have invoked the extraordinary jurisdiction of this Court by filing Writ Petition No. 43/2005 wherein it is prayed that direction be given to Respondents No.2 to 5 in the said petition to take appropriate action for the illegal constructions carried out by respondents No.6 and 7 in the said petition a well as some other prayers are also made in the said Writ Petition. This Court admitted the petition on 2nd May, 2005 and by interim order directed respondent No.5 Chief Town Planner to initiate appropriate action as regards the said violations by issuing show cause notice to the concerned violators that is respondent No.7 and thereafter to take appropriate action in accordance with law. It is also mentioned in the interim order that action to be initiated within 15 days from 2nd May, 05 and completed within four weeks thereafter. It is also observed in the order that the Chief Town Planner will be at liberty to regularise any of the said violations if permissible under law and was

directed to dispose of the said proceedings pursuant to the show cause notice in accordance with law within 15 days from 2.05.05

3. Mr. Sonak, the learned counsel contended that pursuant to the said directions the Chief Town Planner considered the issue in view of the show cause notice and completed the proceedings and passed a final order dated 16.6.05 wherein it is specifically mentioned that the restaurant is a place which is exclusively used by public/inmates/guests and therefore to be treated at par with habitable room standards and require ceiling height as applicable to habitable rooms. It is further observed that in the case of respondent No.7 the ceiling height varies from 2.4 to 2.5 mts. and it is concluded that same is not as per rules and therefore respondent No.7-restaurant shall have to be discontinued as the ceiling height is less than required. In view of these facts, the Chief Town Planner issued following final directions in the Order dated 16.6.05 :-

" To maintain the parking space as per approved plans dt. 20.11.2000 within 30 days of receipt of this direction, failing which the Village Panchayat Benaulim shall restore the areas marked as parking space as per approved plan and to discontinue the restaurant within 30 days of receipt of this direction failing which the Village Panchayat Benaulim shall revoke the Licence and stop the use of the said premises. "

4. Mr. Sonak, the learned counsel for the applicants further contended that this Order dated 16.6.05 passed by the Chief Town Planner was challenged by respondent No.7 by filing Writ Petition No. 243/05 which was disposed of by this Court vide Order dated 21.11.05. It is submitted that the counsel for respondent No.7 contended before this Court on 21st November, 2005 that so far as the issue of parking space is concerned, there is an alternate site in possession of the respondent No.7 and can be used as parking space and appropriate proposal in this regard will be submitted to the competent authority. Another contention which was canvassed by the learned counsel for respondent No.7 before this Court on 21st November, 2005 was that so far as the aspect of height of the rooms of the restaurant is concerned, without prejudice to the rights of the respondent No.7, corrective steps would be taken and requested this Court that the respondent No.7 be permitted to approach the competent authority in case the deficiencies mentioned in the Order dated 16.6.05 are rectified or regularised by the respondent No.7 and also prayed that direction be given to the competent authority to consider the issue afresh and take appropriate decision according to law.

5. Mr. Sonak, the learned counsel contended that in view of the above referred contentions and request made by Mr. Lotlikar, learned senior counsel for respondent No.7 before this Court on 21.11.05 this Court

disposed of the said Writ Petition vide order dated 21st November, 2005 by observing thus :-

" We have considered the submissions canvassed by the learned Senior Counsel as well as by the learned Government Advocate. Since the permission is sought by the learned Senior Counsel on behalf of the petitioner for rectification/regularisation of the deficiencies mentioned in the Order, we do not want to express any opinion at this stage, one way or the other. If the deficiencies on the basis of which the impugned Order dated 16.06.05 is passed by he Chief Town Planner are rectified by the petitioner, we permit the petitioner after such rectification/regularisation to approach the competent authority and if the petitioner moves the competent authority, we direct the competent authority to reconsider the issue in the light of the changed circumstances and proceed according to law. "

6. Mr. Sonak, the learned counsel for the applicants has contended that respondent No.7 did not take any steps for rectification of the irregularities/illegalities mentioned in the Order dated 16.6.05 passed by the Chief Town Planner till this date and continued to operate the restaurant in breach of the provisions of he Act and Rules and therefore the present Misc. Civil Application is moved for appropriate directions.

7. Mr. Lotlikar, the learned senior counsel does not dispute the passing of the order by this Court dated 2nd May, 2005 in W.P. No.43/05, Order passed by the Chief Town Planner dated 16.6.05 as well as the Order dated 21.11.05 whereby W.P. No.243/05 came to be disposed of. Obviously the reason for passing of such orders cannot be disputed which is a matter of record. However, learned counsel contended that steps are being taken by respondent No.7 to rectify the irregularities mentioned in the Order dated 16.6.05 by the Chief Town Planner and further contended that after rectification of these irregularities/shortcomings application is also made before the Panchayat for regularisation and the same is pending before the Panchayat for passing appropriate orders in this regard. Mr. Lotlikar, the learned senior counsel therefore contended that till the issue of regularisation is finally decided by the Panchayat, the respondent No.7 be continued to operate the restaurant.

8. We have considered the various contentions canvassed by the respective learned counsel. Perused the Order dated 16.6.05 passed by the Chief Town Planner pursuant to the interim direction passed by us, clearly demonstrates that the height of the rooms of the restaurant, does not comply with the requirement of Rules applicable to habitable rooms and the Panchayat was directed to maintain the parking space as per the approved plan dated 30.11.2000 and direction was also given to

discontinue the restaurant within 30 days of the receipt of the Order dated 16.6.05. This order was challenged by the respondent No.7 by filing Writ Petition No.243/05 which is disposed of by us vide Order dated 21st November, 2005 and permission was granted to the petitioner in the said Writ Petition (present respondent No.7) to approach the competent authority if the deficiencies on the basis of which the order dated 16.6.05 is passed by the Chief Town Planner are rectified and the competent authority in such situation was directed to consider this issue in the light of the changed circumstances. In the order dated 21.11.05 we have neither altered, changed or modified our interim order dated 2nd May, 05 passed in W.P. No.43/05 nor Order dated 16.6.05 passed by the Chief Town Planner. Indulgence which was shown by us vide order dated 21.11.05 was extremely limited and subject to rectification of deficiencies mentioned in the Order dated 16.6.05 by respondent No.7 and in such situation alone the respondent No.7 was permitted to approach the competent authority. In the instant case it is not in dispute that since the P.D.A. was not in existence when the interim order dated 2nd May, 05 was passed by us, direction was given to the Chief Town Planner who is the competent authority in absence of P.D.A. to issue show cause notice and was also asked to take final decision. Accordingly Chief Town Planner passed the Order dated 16.6.05.

In view of Order dated 21.11.05, we have permitted respondent No.7

to approach the competent authority after rectification of the deficiencies and not otherwise. The words "competent authority" mentioned in the Order dated 21.11.05 is Chief Town Planner and therefore the petitioner is required to approach the Chief Town Planner after rectification of deficiencies mentioned in the Order dated 16.6.05 passed by the Town Planner.

9. Mr. Lotlikar, the learned senior counsel states that the authorised representatives of the respondent No.7 are present in Court and specifically instructed him to make a statement before this Court that they have already taken steps to rectify the deficiencies mentioned in the Order dated 16.6.05 passed by the Chief Town Planner and shall rectify all the deficiencies mentioned in the Order dated 16.6.05 passed by the Chief Town Planner if not rectified earlier, within a period of three weeks from today. Mr. Lotlikar, the learned senior counsel prays for further time of three weeks by way of last chance for the purpose of rectification of the deficiencies mentioned in the Order dated 16.6.05 and prayed that the respondent No.7 be permitted to approach the Chief Town Planner without prejudice to the rights of respondent No.7. It is further prayed that the Chief Town Planner may be directed to decide the issue afresh in view of the changed circumstances after following the principles of natural justice.

10. In the backdrop of the above referred facts and various orders passed by us and the other authority, actually respondent No.7 ought to have already taken the remedial steps to correct the deficiencies mentioned in the Order dated 16.6.05 by the Chief Town Planner. The issue in this regard having been already considered by us in Writ Petition No.43/05, and the said petition was disposed of by us on 21.11.05 by passing a detailed order, the respondent No.7 ought to have taken immediate steps accordingly. However, by way of last chance and in the interest of justice we grant three weeks time to the respondent No.7 to rectify the deficiencies mentioned in the Order dated 16.6.05 passed by the Chief Town Planner and if such deficiencies are rectified the respondent No.7 is entitled to approach the Chief Town Planner on or before the expiry of the last day of the third week from today. If the respondent No.7 after rectification of the deficiencies approaches the Chief Town Planner as permitted by us in the present order, we direct the Chief Town Planner to reconsider the issue afresh in the light of the changed circumstances and shall take final decision after following the principles of natural justice as early as possible and in any case not beyond the period of ten days from the receipt of the representation/application by respondent No.7. We also make it clear that Order dated 16.6.05 shall not come in the way of the Chief Town Planner to reconsider the issue provided respondent No.7 rectifies all the

deficiencies/shortcomings mentioned in the Order dated 16.6.05 passed by the Town Planner. It is made clear that if the respondent No.7 does not approach the Chief Town Planner within the stipulated period mentioned in this order, then after expiry of the last day of the third week from today, permission granted by us to respondent No.7 to approach the Chief Town Planner automatically shall stand revoked without reference to Court and the Chief Town Planner shall ensure the compliance of Order dated 16.06.05.

D. D. SINHA, J.

N. A. BRITTO, J.

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